

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATRICK MORIN and JOSEPH OLIVIERI
as Trustees of the Empire State Carpenters
Welfare, Pension, Vacation, Annuity, Scholarship,
Apprentice-Training, Labor-Management
Cooperation and Charitable Trust Funds,

Plaintiffs,

-against-

ORDER

07 CV 165 (DRH) (AKT)

ANTONICELLI CONSTRUCTION CO., INC.,
PHILIP ANTONICELLI doing business as
Antonicelli Construction, and ANTONICELLI
CONCRETE & MASONRY, INC. f/k/a
Antonicelli Construction, Co., Inc.,

Defendants.

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HURLEY, Senior District Judge:

This Court granted plaintiffs' motion for an entry of default judgment against defendants Antonicelli Construction Co., Inc., Philip Antonicelli doing business as Antonicelli Construction, and Antonicelli Concrete & Masonry, Inc. f/k/a Antonicelli Construction Co., Inc. and referred the case to Magistrate Judge A. Kathleen Tomlinson, pursuant to 28 U.S.C. § 636(b)(3), for a report and recommendation as to damages and attorneys' fees. On July 23, 2012, Judge Tomlinson issued a Report and Recommendation that "no damages be awarded to the Plaintiffs" due to their failure to submit adequate documentation in support of their application for damages, including "an affidavit from a person with knowledge of the underlying claim" or "copies of the relevant trust agreements." (R&R at 1 & 4.) Judge Tomlinson concluded her Report and Recommendation as follows: "This Court leaves to Judge Hurley the determination whether Plaintiffs should be given a further opportunity to present their proof of damages with

appropriate supporting documentation as well as adequate affidavits and needed explanations.”

(*Id.* at 8.) On August 10, 2012, defendants were served with a copy of the Report and Recommendation. More than fourteen days have elapsed since service of the Report and Recommendation. No party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the Court adopts the July 23, 2012 Report and Recommendation of Judge Tomlinson as if set forth herein. Plaintiffs’ request for damages from defendants is denied without prejudice. Plaintiffs may renew their request for damages within thirty (30) days of the date of this Order by filing an amended application that includes supporting documentation that conforms to the requirements and specifications set forth in Judge Tomlinson’s Report and Recommendation. If plaintiffs do not renew their damages request within thirty (30) days, this case will be closed.

SO ORDERED.

Dated: Central Islip, New York
August 28, 2012

/s/
Denis R. Hurley
United States District Judge